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SUPREME COURT, U.S.

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 313

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

W. O. CULBERTSON, SR., AND GLADYS CULBERTSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

The Government's position is adequately set forth, we think, in the petition for certiorari, and will not be restated here.

However, we wish to say an additional word as to the significance of this case. The reason for granting certiorari is far more important than the case itself. Several years ago, this Court, in *Commissioner* v. *Tower,* 327 U. S. 280, and *Lusthaus* v. *Commissioner,* 327 U. S. 293, laid down the principles to be followed in the so-called family partnership cases. It was obvious that no two family partnerships would be exactly alike, and that it would therefore be necessary for the lower courts to apply these principles to the facts of specific cases. A large number of such cases did come before the Tax Court. Where the Tax Court's decision in the application of these prin-

ciples to the facts of a particular case was adverse to the Government, the Commissioner did not appeal. On the other hand, taxpayers in many such cases have continuously sought reversal of Tax Court decisions adverse to them. Although such appeals have generally been futile (see footnotes 9 and 10, pp. 15–16 of the petition for certiorari herein), there has been an increasing tendency in several circuits to re-examine the facts and to reverse decisions of the Tax Court which, in our judgment, correctly applied the principles of the *Tower* and *Lusthaus* cases to the specific factual situations involved.[1]

The Government is not asking the Court to announce any new rules. It merely asks the Court to reaffirm the principles established in the *Tower* and *Lusthaus* cases. Since the facts of each family partnership case differ in some respect from the facts of every other family partnership case, including the *Tower* and *Lusthaus* cases the nselves, it is always possible to focus upon such differences and, by exaggerating their importance, to attempt to spell out different legal principles based upon those factual differences. Such was the technique employed by the Court of Appeals in reversing the

[1] See Pet. 8, footnote 2. In addition to the cases there cited, the following decisions rendered during the past few months represent further instances in which the courts of appeals have reversed the Tax Court, unjustifiably, we think, in family partnership cases: *Kent* v. *Commissioner*, 170 F. 2d 131 (C. A. 6); *Hartz* v. *Commissioner*, 170 F. 2d 313 (C. A. 8); *Walsh* v. *Commissioner* (C. A. 8), decided November 12, 1948, 1948 C. C. H., par. 9403; *Graber* v. *Commissioner* (C. A. 10), decided November 12, 1948, 1948 C. C. H., par. 9409.

judgment of the Tax Court herein. But the Tax Court had properly appraised the facts of this case in the light of the *Tower* and *Lusthaus* decisions, and it is important to the orderly administration of the tax laws that the correct application of established legal principles by the Tax Court to the facts of a particular case be not upset upon the ground that certain relatively unimportant factual differences require a different result. The *Tower* and *Lusthaus* decisions made it clear that where the new partners contribute neither vital services nor capital originating with them, the allocation of profits under the so-called partnership is not conclusive for federal income tax purposes. The Tax Court recognized this basic principle and correctly applied it to the facts of this case. As was pointed out in detail in our petition for certiorari herein (pp. 11–15), the purported differences between this case and the *Tower* and *Lusthaus* cases do not call for any different rule of law and certainly do not justify appellate reversal of the Tax Court's judgment.

Respectfully submitted.

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